UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Dominion Transmission, Inc. — Docket Nos. CP03-41-000
Texas Eastern Transmission, LP — and CP03-43-000

ORDER ISSUING CERTIFICATES

(Issued September 11, 2003)

1. On January 24, 2003, Dominion Transmission, Inc. (Dominion), in Docket No. CP03-41-000, and Texas Eastern Transmission, LP (Texas Eastern), in Docket No. CP03-43-000, filed abbreviated applications for certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations. Dominion requests approval for its Mid-Atlantic Expansion Project for which it proposes to construct certain compression facilities on its existing system in Pennsylvania, Virginia, and West Virginia, to lease capacity on Texas Eastern's system in Pennsylvania, and to provide certain firm transportation and storage services on the new and leased capacity. Texas Eastern requests approval for its Dominion Expansion Project for which it proposes to construct facilities that will increase the firm transportation capacity on its system by 223,000 dekatherms per day (Dth/d) and to lease this incremental capacity to Dominion.

2. These projects are in the public interest because they will provide Dominion's customers with access to an increased supply source via Texas Eastern's upstream supply markets and increase flexibility and reliability on Dominion's and Texas Eastern's pipeline systems. Dominion's use of leased capacity on Texas Eastern's system avoids the construction of duplicative facilities thus minimizing cost and environmental impacts. Finally, the applicants' existing customers will not subsidize the projects.

3. As discussed below, this order grants the requested certificate authorizations subject to certain modifications and conditions.

I. Background and Proposals

A. Dominion's Docket No. CP03-41-000 The Mid-Atlantic Expansion Project

4. Dominion conducted an open season from June 20, 2001 to August 3, 2001, for up to 400,000 Dth/d of firm transportation and up to 10 Bcf of firm storage service. Interested shippers had the option of contracting to move natural gas supplies to Dominion's PL-1 pipeline[1] from Dominion=s hub-like system and existing pipeline interconnects, or from an interconnect with the Cove Point LNG pipeline in Loudoun County, Virginia. From June 28, 2001 to July 31, 2001, Dominion conducted a reverse open season to determine if existing customers desired to permanently release capacity that could be used to provide the service described in the open season. Dominion did not receive any nominations for released capacity that would obviate any or all of the facilities proposed for the service described in the open season.

5. As a result of the open season, Dominion entered into precedent agreements with ten-year terms with five customers[2] for a total of 223,000 Dth/day of firm transportation service and with four of the five transportation customers[3] for a total of 5.6 Bcf of firm storage services. The proposed commencement dates are April 1, 2004 for the storage service and November 1, 2004 for the firm transportation service.

6. To provide the service, Dominion requests authority to lease 223,000 Dth/d of capacity on Texas Eastern's CRP Line[4] from a receipt point near Dominion's Crayne

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[1] Dominion's PL-1 Line extends south from Perulack, Pennsylvania through its Chambersburg Compressor Station and through Maryland into Virginia, terminating at Dominion's interconnect with Virginia Natural Gas Company in Quantico, Virginia.

[2] Dominion's expansion customers are: Virginia Natural Gas, Virginia Power Energy Marketing (VPEM), Columbia Gas of Virginia, City of Richmond, Virginia (Richmond), and Washington Gas Light Company (WGL).

[3] VPEM will not receive storage services pursuant to Dominion's project.

[4] The CRP Line on Texas Eastern's system, which is jointly owned by Texas Eastern and Dominion, extends about 264 miles from Texas Eastern's Uniontown Compressor Station to its Lambertville Compressor Station.

Compressor Station located at the interconnection of Dominion's system and Texas Eastern's CRP Line in Greene County, Pennsylvania to a delivery point at the interconnection between the CRP Line and Dominion's PL-1 Line at the Chambersburg Compressor Station in Franklin County, Pennsylvania.

7. Dominion also proposes to construct and place in service two new compressor stations and add compression facilities to four existing compressor stations for a total increase of 39,200 hp. Specifically, Dominion proposes to:

(a) install a 5,000 hp gas-fired turbine at a new compressor station, Mockingbird Hill Compressor Station, located in Wetzel County, West Virginia;

(b) install a 6,000 hp gas-fired turbine at a new compressor station, Quantico Compressor Station, located in Fauquier County, Virginia;

(c) replace the existing #1 unit, a 5,500 hp gas-fired turbine, with a 7,800 hp gas-fired turbine, and to refigure the existing #2 unit from a 6,500 hp gas-fired turbine to a 7,800 hp gas-fired turbine at the existing Crayne station, located in Green County, Pennsylvania;

(d) upgrade the two existing electric powered units from 4,000 hp to 4,600 hp, and to install two new 7,800 hp gas-fired turbines at the existing Chambersburg station, located in Franklin County, Pennsylvania;

(e) install an additional 7,800 hp gas-fired turbine at the existing Leesburg station, located in Loudoun County, Virginia;

(f) install non-jurisdictional facilities as associated appurtenant facilities with each compressor installation and to conduct non-jurisdictional work associated with abandoned oil wells at its Fink-Kennedy/Lost Creek Storage Reservoir (FKLC) to insure the integrity of the reservoir.

8. The estimated cost of Dominion's proposed project is approximately $78 million of which $68 million is transportation costs and $10 million is storage costs. Dominion will pay Texas Eastern a monthly Lease Payment of $1,085,341 for the leased capacity. Dominion proposes incrementally priced transportation services at rates that are designed to recover the costs of both Dominion's incremental transmission facilities and the capacity that is to be leased from Texas Eastern. In addition to an incremental transportation rate, Dominion proposes to charge four of the five expansion shippers a reservation-based compression charge to recover the cost of the new Quantico

compressor station. Dominion states that, since WGL will not use the Quantico station, it will not be required to pay the compression charge.

9. Dominion proposes to roll in the proposed storage service costs in its next general Section 4 rate case, stating that the incremental cost-based storage rates would be less than the existing storage rates.

B. Texas Eastern's Docket No. CP03-43-000 The Dominion Expansion Project

10. Texas Eastern proposes to lease to Dominion 223,000 Dth per day of firm capacity as described above. To provide the capacity, Texas Eastern requests authorization to replace, in four segments, a total of approximately 36.64 miles of its existing 24-inch diameter pipeline (Line No. 1), which is currently abandoned in place, with four new 36-inch diameter pipeline loop segments. Texas Eastern proposes to remove the existing pipe and install the 36-inch diameter pipe in the same right-of-way. In addition, Texas Eastern proposes to replace the existing aerodynamic assembly on the 11,000 hp electric drive compressor unit at its Uniontown (Station 21-A) Compressor station in Uniontown, Pennsylvania, to accommodate the increased throughput. The estimated cost of the proposed project is $82.8 million. Texas Eastern states that this cost will be fully reimbursed by Dominion under the Lease Agreement with no subsidization by Texas Eastern=s existing customers.

11. The lease agreement with Dominion has a primary term of twenty years and is year to year thereafter. The lease agreement also provides that Dominion has the option, upon at least one year's written notice prior to the end of the first ten years after the commencement date, of making a one-time election to either (1) reduce the maximum lease capacity up to 111,500 Dth per day effective ten years after the commencement date of the lease through the lease's primary term or (2) re-specify the end of the primary term to be fifteen years after the commencement date rather than twenty years. If Dominion does not make either election, the lease will continue in full force and effect through the twenty-year primary term.

12. The fixed monthly lease payment of $1,085,341 per month is equal to the product of $4.8670 Dth per month multiplied by the maximum lease quantity of 223,000 Dth. Texas Eastern states that the lease payment will recover costs associated with the construction of the Lease Facilities. This monthly lease payment is less than Texas Eastern's firm Part 284 transportation tariff rate for service over the same transportation path as the lease. The Lease Agreement does not provide for flexible receipt and delivery points or capacity release rights available to maximum rate shippers pursuant to Texas

Eastern's tariff. Texas Eastern submits that the reduced rate under the Lease Agreement reflects, in part, the more limited nature of service under the Lease Agreement.

II. Interventions

13. Notice of Dominion's and Texas Eastern's applications in Docket Nos. CP003-41-000 and CP03-43-000 were published in the Federal Register on February 6, 2003 (68 Fed. Reg. 6132). The Public Service Commission of the State of New York filed a timely notice of intervention and a number of parties filed timely unopposed motions to intervene.[5] Baltimore Gas & Electric Company, Midwestern Gas Transmission Company, and Tennessee Gas Pipeline Company filed late motions to intervene in both dockets in this proceeding. Texas Eastern filed a late motion to intervene in Docket No. CP03-41-000. Their late motions have demonstrated an interest in this proceeding and granting the motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, for good cause shown, we will grant the late motions to intervene.[6] The intervenors are listed in Appendix A.

14. The City of Richmond, Virginia (Richmond) filed a protest to, and comments in qualified support of, Dominion’s application in Docket No. CP03-41-000. A number of parties filed comments addressing, for the most part, the rate aspects of the applications.[7] VPEM and WGL filed interventions in support of the applications. Dominion, Texas Eastern, and WGL filed answers to the comments and the protest to which KeySpan Delivery Companies (KeySpan), National Fuel Gas Distribution Corporation (National Fuel), and Richmond filed answers. Section 385.213(a)(2) of the Commission's Rules of Practice and Procedure generally does not permit answers to protests or to answers. However, accepting the answers will not unduly prejudice any party and will ensure a complete record upon which the Commission may base its decision. Accordingly, for

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[5] Timely notices of intervention and unopposed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214.

[6] See 18 CFR § 385.213(a)(2).

[7] The commenters are Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., jointly, (Con Edison), Doswell Limited Partnership, Northeast Energy Associates and North Jersey Energy, jointly, (Doswell), KeySpan Delivery Companies (KeySpan), National Fuel Gas Distribution Corporation (National Fuel), New York State Electric & Gas Corporation (NYSEG).

good cause shown, the Commission will accept these answers. The comments and protest are addressed below.

III. Discussion

15. Dominion's and Texas Eastern's proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission; accordingly, the construction and operation of the facilities are subject to the requirements of Section 7 of the NGA.

A. Commission Policy Statement

16. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[8] The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity; the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

17. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant had made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the

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[8] Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC **&** 61,227 (1999); order clarifying statement of policy, 90 FERC **&** 61,128 (2000); order further clarifying statement of policy, 92 FERC **&** 61,094 (2000).

adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

Subsidization

18. The Commission's Policy Statement directs that the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. As discussed more fully below, Dominion's existing customers will not subsidize the costs of the proposed project since the proposed incremental rates for firm transportation service and the proposed rolled-in storage rates provide for adequate financial support to cover the cost of service for the proposed facilities and the Texas Eastern lease. Since Texas Eastern's proposal is priced on an incremental basis, its existing shippers will not subsidize the project.

Effect on Other Constituent Groups

19. The Commission finds that Dominion's and Texas Eastern's proposals should have no adverse impact on existing pipelines in their markets or on those pipelines' captive customers. The gas transported over the proposed capacity represents incremental requirements of the project shippers and thus the proposed services will not replace existing service provided by another pipeline. The existing shippers on the applicants' pipelines will not suffer adverse operational or economic impacts. Texas Eastern's existing customers will have access to an increased market area in the Mid-Atlantic region and will enjoy increased system reliability and flexibility due to higher design operating pressures and the increased line pack associated with the increase in pipeline looping. Dominion's proposed facilities will benefit its existing customers by alleviating existing system capacity constraints during the winter season, providing additional system flexibility and reliability when not fully utilized by the Mid-Atlantic shippers, and providing access to Texas Eastern's upstream supply sources.

20. The Commission finds that the proposals will have no adverse economic impact on affected landowners. Dominion has demonstrated the need for its project since it has executed long-term precedent agreements for all of the proposed capacity. Dominion states that it will not have to exercise eminent domain for its proposed project since it owns the sites where the compressor additions will be constructed and it will purchase the sites where new compressors will be located. Texas Eastern's proposed facilities will be installed using existing Texas Eastern right-of-way.

21. Dominion's leasing of capacity from Texas Eastern avoids the construction of duplicative facilities and lowers costs and environmental impacts. Without the leased capacity, Dominion estimates that it would have to construct approximately 125 miles of 20-inch diameter pipeline from Crayne to Chambersburg at a cost of approximately $140 million. Although the construction could follow the CRP Pipeline right-of-way, Dominion would still require the acquisition of new rights-of-way, and cross numerous water bodies, woodlands, and roads. Without the pipeline looping Texas Eastern proposes to install on its system, Dominion states that it would be required to construct over 100 more miles of pipeline with increased cost and environmental impact.

22. Consistent with the criteria discussed in the Policy Statement, we find that the benefits of Dominion and Texas Eastern's proposed projects will outweigh any potential adverse effects, and that the proposals are required by the public convenience and necessity.

B. Dominion's Rates

1. Initial Transportation Rates

23. Dominion proposes to charge an incremental postage stamp monthly Transportation Reservation rate of $8.9868 per Dth [9] and a monthly Quantico Compression Reservation rate of $1.9001 per Dth [10] for the expansion project. Dominion states that all expansion shippers will pay the incremental Transportation Reservation rate, but only those shippers whose delivery point is Quantico, Virginia (the terminus of the PL-1 Line) will be charged the Quantico compressor charge. Since only one shipper, WGL, elected Leesburg as its delivery point, it will not be charged the Quantico compressor charge.

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[9] The monthly Transportation Reservation Charge in Dominion's original application was $9.0270 per Dth. Dominion revised the Transportation Reservation charge to $8.9868 per Dth in its data response filed on March 31, 2003 to reflect the final project design results in lower non-lease O&M costs.

[10] The monthly Quantico Compression Reservation Charge in Dominion's original application was $2.0048 per Dth. Dominion revised the Quantico Compression Reservation Charge to $1.9001 per Dth in its data response filed on March 31, 2003 to reflect the final project design results in lower non-lease O&M costs.

24. Richmond argues that Dominion’s proposal to isolate the Quantico Compressor and assign its costs only to the expansion shippers that utilize the facility is inconsistent with the Commission’s practice of allocating all of a project’s costs to all of a project's expansion shippers. Richmond submits that, given Dominion’s proposal with respect to the Quantico compressor station charge, most, if not all, of the costs of the new facilities at the Leesburg compressor station should be assigned to WGL which receives gas from Dominion at the nearby Leesburg delivery point.

25. Finally, Richmond contends that the proposed WGL rate treatment contravenes its Precedent Agreement with Dominion[11] and would result in a cost shift to Richmond totaling more than $4.34 million over the course of the 10 year FTNN Service Agreement.

26. Dominion and WGL respond that it is fundamental to the Commission's rate-making policies that cost allocation should follow cost causation. Dominion asserts that since service to WGL will not utilize the Quantico Compressor Station, WGL's rates should not include the Quantico charge. Dominion explains that all of the expansion shippers except WGL have elected a primary delivery point at Quantico, Virginia, at the terminus of Dominion's PL-1 pipeline where the Quantico Compressor Station is located. Dominion states that WGL's primary delivery point, on the other hand, is located approximately 30 miles upstream of the Quantico Station at the Leesburg Compressor Station in Leesburg, Virginia.[12] Dominion and WGL maintain that there is no cost shift or subsidy involved in Dominion's proposed rates. WGL argues that any additional costs

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[11] Section 3.A(iii) of each expansion shipper's Precedent Agreement, provides that:

> Customer shall also pay Pipeline a separately calculated incremental reservation charge for Project transportation services. The incremental reservation charge shall be designed to collect the annual incremental cost of service associated with the fixed cost of Project transportation related facilities over all of the firm transportation reservation billing units added as a result of the project.

[12] Although Dominion states that the primary receipt point is Leesburg, Virginia, the WGL Precedent Agreement indicates that the delivery point is Leesburg (at pages 13-14) and that the receipt point is Loudoun, Virginia (at pages 10-11).

associated with the Texas Eastern facilities should be paid only by the FTNN subscribers who require the related services.

27. Contrary to Richmond's claim with respect to the Leesburg Compressor Station, Dominion states, all expansion shippers will make use of the additional compression at Leesburg which will help maintain the required pressure for deliveries at the Quantico Compressor Station. Dominion adds that if there were less compression at Leesburg, additional compression would be required at Quantico to serve the customers taking their deliveries there.

Commission Response

28. For the reasons discussed below, we will not accept Dominion’s proposal to charge an incremental Transportation Reservation charge and a separate Quantico Compression Reservation charge for the expansion project. Instead, the Commission will require an incremental firm transportation reservation charge of $9.9070 per Dth per month as the maximum recourse initial rates for firm transportation service on Dominion's expansion project. This reservation rate is based on the total annual transportation cost of service (including Quantico storage costs and Texas Eastern lease costs) as revised in Dominion's March 31, 2003 data response of $26,511,110 and total incremental annual transportation monthly billing determinants of 2,676,000 Dth (223,000 Dth X 12 months).

29. The Commission is modifying the proposed initial rate because we will not approve Dominion's proposal to assess Rate Schedule FT and FTNN customers utilizing the Quantico Compressor Station a separate reservation rate. Dominion’s tariff does not provide that customers must subscribe to a separate compression service to achieve customer desired delivery pressures. Section 5 of Dominion's General Terms and Conditions (GT&C) provides that:

> Pipeline will use due care and diligence to maintain such uniform pressures at delivery point(s) as may reasonably be required by Customer, but the maximum pressure at which Pipeline may be required to deliver gas to Customer shall be that specified in the Service Agreement between Pipeline and Customer.[13]

[13] Dominion's FERC Gas Tariff, Third Revised Vol. No. 1, Original Sheet No. 1029.

30. In addition, since Dominion's tariff is not zoned or mileage based, rates for transportation services are not based on the location of receipt or delivery points.[14] Dominion's tariff also combines transportation and compression services. The tariff does not distinguish between transportation and compression or state that certain delivery pressures require additional service and additional charges. Nor do Dominion's Rate Schedules FT and FTNN rates contain separately stated mainline and compression transportation components.[15] Thus, Dominion’s proposal to separately charge certain expansion shippers for compression service amounts to a negotiated term and condition of service. Under the Commission's policies for Part 284 services, pipelines are not permitted to negotiate terms and conditions of service applicable to individual customers.[16]

31. For all of the above reasons, the Commission rejects Dominion's proposed Quantico Compressor Reservation Charge. However, if Dominion wants to offer a new compression service to all customers under its Part 284 blanket transportation certificate, it can file for the new service in a Section 4 filing with the documentation supporting the proposed rate and rate design as required by Section 154.312 of the Commission's regulations.

2. WGL’s Precedent Agreement

a. Summer Reservation Rate

32. Dominion proposes to charge WGL a summer reservation rate of $4.2583 for volumes transported under its Rate Schedule FTNN contact. Dominion initially stated that WGL will receive a rate discount on its summer FTNN service. Dominion, in its March 31, 2003 data response, states that the lower rate is not a discounted rate, but reflects that WGL's requested receipt point will not utilize the leased capacity on Texas Eastern. Dominion's transportation service for WGL during the summer period utilizes only a few miles of pipeline between Loudoun, Virginia and Leesburg, Virginia. Thus, WGL's summer reservation rate reflects only the portion of the incremental facilities

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[14] Dominion's FERC Gas Tariff, Third Revised Vol. No. 1, Rates Schedules FT and FTNN, Section 5.

[15] Dominion's FERC Gas Tariff, Third Revised Vol. No. 1, 20th Revised Sheet No. 32.

[16] Order Terminating Proceedings, 90 FERC & 61,110 at 61,345 (2000).

utilized and not the costs associated with the leased capacity. Lastly, Dominion states that it is willing to accept the risk of any under-recovery of costs that may result from this reduced summer reservation rate.

33. Richmond contends that Dominion's proposal to provide a preferential rate to WGL is unsupported and unduly discriminatory. Richmond claims that a critical underpinning of the expansion project was that each firm shipper was to share proportionately in the costs to provide the new firm transportation service based on its requested level of service. Richmond claims that all of the FTNN expansion shippers are similarly situated and the Commission must require Dominion to charge the same rates to all such shippers.

34. Richmond claims that WGL's Precedent Agreement does not set forth any specific discounted rate, but omits the reference to "the allocated cost of lease payments or other costs incurred by Pipeline to arrange for the transportation of gas from its integrated system..." that is found in some of the other Precedent Agreements. Richmond notes that even though VPEM’s Precedent Agreement omits this language, VPEM will be charged the full incremental rate including the cost of the leased capacity.

35. Finally, Richmond contends that should the Commission approve Dominion's proposed summer discounted rates to WGL, the Commission must condition the certificate to preclude Dominion’s recovery of the revenue it does not receive from WGL because of the reduced summer rate.

36. In its answer, Dominion states that all customers were given the choice of a primary receipt point at Oakford or at Loudoun during the open season for the expansion project. Dominion further states that all customers were given the option of the lower rate if they elected the Loudoun receipt point because no capacity on Texas Eastern would be required in order for Dominion to perform the transportation service. WGL was the only shipper who elected the Loudoun receipt point. Finally, Dominion states that the proposed rate for WGL is a summer rate, not a discounted rate.

Commission Response

37. Dominion originally maintained that the proposed rate for WGL is intended to be a discounted rate and subsequently stated that it is intended to be a summer rate. We will not approve the rate under either scenario. Dominion does not currently offer seasonal

transportation rates on its system.[17] If Dominion wishes to propose a change in its rate design to establish winter and summer rates, the appropriate filing would be in a limited Section 4 proceeding,[18] not a certificate proceeding such as this one. Therefore, the Commission rejects Dominion's proposal to establish a summer firm transportation reservation rate of $4.2583 per Dth per month for services over the incremental facilities that do not include use of the Quantico Compressor Station. This finding is without prejudice to any Dominion Section 4 filing wherein it makes such a proposal.

38. In Dominion's alternative explanation for the summer rate it indicates that it offered that rate because WGL would not utilize the leased facilities during the summer. Under other circumstances, that explanation would be sufficient to offer WGL a discounted rate, provided Dominion offered the same discount to similarly situated customers.[19] However, Dominion cannot establish such a discounted rate as an initial rate in this proceeding for the same reasons we rejected its summer rate proposal. Dominion currently designs its rates on the postage stamp method. Thus, rates do not vary based on the points of receipt and delivery. This finding is without prejudice to any Dominion general Section 4 filing wherein it makes such a proposal. In addition, as Dominion indicates it has the ability to determine the capacity path some customers' services use, any such filing must also address Dominion's compliance with Section 284.7(d) of the Commission's regulations with respect to segmentation on its system.

b. TCRA and EPCA Charges and System-Wide Fuel

39. Dominion's Precedent Agreement with WGL provides that during the winter period WGL will be charged, among other things, the Transportation Cost Rate Adjustment (TCRA) and Electric Power Cost Adjustment (EPCA) charges and surcharges. However, rates for the summer period do not include the TCRA and EPCA charges. In addition, WGL's Precedent Agreement provides for a primary receipt point

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[17] Dominion's FERC Gas Tariff, Third Revised Vol. No. 1, 20th Revised Sheet No. 32.

[18] Order No. 637, at 31,292; Order No. 637-A at 31,576-31,578.

[19] Sections 161.3(a) and (h); see also Colorado Interstate Gas Co., 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC ¶ 61,019 (2002).

during the summer period of Loudoun, Virginia and any secondary points of receipt available under the FTNN Transportation Service Agreement.

40. National Fuel contends that Dominion must be required to impute billing determinants equivalent to WGL=s summer period FTNN demand determinants when it makes its annual TCRA and EPCA filings.[20]

41. Dominion and WGL respond that WGL=s FTNN Agreement for the summer period will be limited to only a short stretch of Dominion=s PL-1 line and will not contribute to the costs tracked by Dominion in is TCRA and EPCA charges. Dominion and WGL state that the omission of those charges from WGL=s summer FTNN service will not result in any subsidy by existing customers.

42. National Fuel contends that Dominion=s response fails to assure that WGL=s use of secondary points will not contribute to costs associated with the TCRA and EPCA. National Fuel believes that one of two conditions must be placed on Dominion=s service to WGL where the TCRA and EPCA system charges are being waived or discounted: 1) Dominion must be required to impute billing determinants equivalent to WGL=s summer-period discounted service when it makes its EPCA and TCRA rate filing; or, 2) Dominion must not be permitted to discount or waive its TCRA and EPCA charges to WGL should WGL move off its primary points.

Commission Response

43. The Precedent Agreement with WGL provides for summer period primary receipt and delivery points of Loudoun, Virginia and Leesburg, Virginia, respectively and also provides that WGL may utilize any secondary receipt points available under the FTNN service agreement. However, the Precedent Agreement is silent with respect to the payment of TCRA and EPCA charges during the summer period. Dominion’s tariff provides that Dominion may discount fuel charges where it can be shown that no fuel is consumed[21] and Dominion alleges that transportation between the primary points does not utilize fuel. However, Dominion has not explained why service at secondary receipt

[20] National Fuel also requests that Dominion clarify whether VPEM will receive a discount of the TCRA and EPCA charges and surcharges as part of the incremental rate. Dominion clarifies that VPEM will not receive such a discount.

[21] CNG Transmission Corp., 64 FERC & 61,303 at 63,222-63,223 (1993).

points would not incur TCRA or EPCA costs given that there is no limitation as to the source of the gas or the transportation path when service is provided at secondary receipt points. As noted in the comments, Dominion incurs these costs in the summer, so it is unlikely that all secondary transportation paths would not have TCRA or EPCA costs associated with them. Finally, Dominion cannot offer discounts of this nature since fuel is considered a variable cost and Commission regulations provide that pipelines cannot discount below variable costs.[22]

44. For these reasons, the Commission finds that because the precedent agreement does not distinguish whether TCRA and EPCA charges are attributable to primary or secondary points, the agreement is inconsistent with both Dominion's tariff and the Commission's regulations for discounted rates. Accordingly, Dominion must charge WGL the TCRA and EPCA charges during the summer period.

45. Alternatively, should Dominion elect not to assess WGL these charges, Dominion must file the WGL agreement as a negotiated rate agreement[23] pursuant to Dominion’s previously granted authority to offer negotiated rates.[24] Any service agreement signed with an expansion shipper containing a negotiated rate must comply with our Alternative Rate Policy Statement,[25] our decision in NorAm Gas Transmission Company (NorAm),[26] and Modification Of Negotiated Rate Policy. [27] Further, consistent with NorAm, we will require Dominion to file either its negotiated rate contracts or numbered tariff sheets 30

[22] 18 C.F.R. ' 284.10(c)(5)(ii)(A) (2003).

[23] Consistent with Trailblazer Pipeline Company, 77 FERC & 61,274 (1997), Order on Compliance Filing and Rehearing, 80 FERC & 61,295 (1997), there should be a meeting of the minds between Dominion and WGL as to whether this contract is a discounted rate contract or a negotiated rate contract.

[24] CNG Transmission Corp., 77 FERC ¶ 61,092 (1996), reh’g denied, 80 FERC ¶ 61,401 (1997)(CNG was Dominion’s predecessor-in-interest).

[25] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC & 61,076 (1996).

[26] 75 FERC & 61,091 (1996).

[27] 104 FERC ¶ 61,134 at PP 31-33 (2003).

days prior to the commencement of service on the expansion project, stating for each shipper paying a negotiated rate the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported and a statement that the agreement conforms in all material respects with the pro forma service agreement in Dominion's FERC Gas Tariff.[28] Dominion must also disclose all consideration linked to the agreements. Dominion must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I and J in any future NGA Section 4 or 5 rate cases. Finally, if Dominion elects this option, Dominion will be required to impute billing determinates based on WGL's summer period secondary point transportation when Dominion makes its annual TCRA and EPCA filings.

3. Initial Storage Rates

46. Dominion proposes to charge its Rate Schedule GSS Part 284 rates as the initial maximum recourse rates for the new storage services, and Dominion proposes to roll in the storage service costs in its next general Section 4 rate case.

47. NYSEG and Doswell state that they do not oppose rolled-in rate treatment for the storage component of this project, but seek assurance that existing shippers will not be required to subsidize the project if cost overruns on the storage component occur. Doswell states that the precedent agreements do not appear to contemplate the allocation of any potential cost overruns of the storage component of the proposed services. KeySpan argues that a determination of whether the incremental storage costs should be rolled-in should be resolved in Dominion's next general rate case, not in this proceeding. In its Answer Dominion reiterates that the Commission should permit Dominion to roll-in its cost of the expansion of storage facilities since the expansion will result in revenues that exceed costs and will not require any increase in system-wide rates.

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[28] This action merely emphasizes the Commission's current regulations which require that if the pipeline contends that its filing implements a negotiated contract that conforms to its form of service agreement in all material aspects, and therefore, it is not necessary to file the contract, such a filing will contain a statement that the pipeline's filing complies with the requirements of 18 CFR § 154.1(d) (2003). Violation of this regulation may result in the rejection of the filing or suspension of the pipeline's negotiated rate authority.

Commission Response

48. Dominion's proposal to roll into future GSS rates the estimated storage expansion costs of approximately $1.55 million is consistent with the Commission's Policy Statement regarding rolled-in rates. Dominion's Exhibit N projects that storage revenues of approximately $2.8 million will exceed costs by approximately $1.25 million. Thus, Dominion has demonstrated that existing storage customers will not subsidize the expansion project. Accordingly, we will approve Dominion's request to roll-in the storage service costs of expansion in its next general rate proceeding. However, our approval is conditioned on there being no material changes in the relevant facts and circumstances associated with the project at the time Dominion proposes to roll in the subject costs.[29]

49. This conditional approval addresses NYSEG and Doswell's concern that existing shippers will not be required to subsidize the project if cost overruns on the storage component occur. Our conditional approval protects existing customers if there are material changes in the relevant facts or circumstances associated with the storage component. Dominion will have to support and justify any cost and revenue deviations within the context of a future rate case.

4. FKLC Storage Reservoir Costs

50. Dominion proposes to install non-jurisdictional facilities and associated appurtenant facilities with each compressor installation and conduct non-jurisdictional work on abandoned oil wells at its FKLC Storage Reservoir to insure the reservoir's integrity. Dominion anticipates that the long-term effect of its proposed incremental storage development will be to reduce the rates for all customers under Rate Schedule GSS. Dominion states that incremental cost-based storage rates would be less than the existing storage rates.

51. Richmond claims that Dominion proposes to recover in the Transportation Reservation charge an estimated $10 million in costs related to these non-jurisdictional facilities. Richmond contends that Dominion has provided no reason to include such costs regarding the reservoir which appears to be a significant distance away from any of the proposed compressor station additions.

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[29] Iroquois Gas Transmission System, L.P. 101 FERC ¶ 61,131 at 61,545 (2002) and Columbia Gas Transmission Corporation, 99 FERC ¶ 61,190 at 61,778 (2002).

52. Dominion replies that that the costs of the proposed activities at FKLC are not included in its proposed Transportation Reservation Charge but have been allocated entirely to storage. Noting that, as part of the proposed expansion project, it offered 5.6 Bcf of incremental storage capacity, Dominion states that it must institute a plugging program for wells within the Fink portion of the FKLC storage complex to ensure that the additional inventory injected into Fink as a result of the expansion can be contained and managed with the highest level of confidence.

Commission Response

53. First, the Commission disagrees with Richmond's contention that $10 million in non-jurisdictional costs are not associated with or necessary to prepare the FKLC storage complex for the new firm storage service. Dominion has demonstrated that these costs are necessary to prepare and maintain the FKLC storage complex for the new firm storage services. Therefore, these costs are recoverable in Dominion's storage rates. Second, Richmond alleges that the $10 million in non-jurisdictional costs are recovered in the transportation reservation charge. However, those costs are recovered in Dominion’s storage rates.

5. Leased Capacity on Texas Eastern

54. Dominion proposes to lease from Texas Eastern 223,000 Dth per day of transportation capacity from Dominion's Crayne Compressor Station in Green County, Pennsylvania to Dominion's Chambersburg Compressor Station in Franklin County, Pennsylvania. Dominion will pay a monthly rate that equates to $4.8670 per Dth for the leased capacity or $13,024,092 annually.[30] The lease arrangements do not provide Dominion with access to other portions of Texas Eastern's mainline system. Dominion states that it will use the leased capacity as if it were part of its own system.

55. The Lease Agreement provides Dominion with an option at the end of the first ten years to either 1) reduce the amount of capacity under the lease by half for the last 10 years or 2) reduce the term to 15 years. Exercise of either option would reduce, but not eliminate, Dominion’s stranded cost liability if the project shippers decide not to extend their contracts.

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[30] The monthly reservation rate for comparable service under Texas Eastern's Rate Schedule FT-1 from M2 to M3 is $8.8460 per Dth.

56. National Fuel argues that Dominion must be held at risk for the project costs associated with its incremental transportation service, including the costs stemming from the capacity lease with Texas Eastern. Dominion responds that it has no ability to collect the costs of the lease from anyone other than the expansion shippers, unless it makes a rate filing where all interested parties would be free to addresses the issue. Dominion, however, expects that additional demand will exist after the 10-year term of the original precedent agreements expires and the lease capacity will still be required by its customers. Dominion reiterates that its existing customers will not bear any of the costs of the Texas Eastern lease.

57. Further, Dominion states that it has utilized the entire design determinants of the expansion project in its recovery of the Texas Eastern lease costs to ensure that it is at risk for under utilization of capacity.

Commission Response

58. As explained in greater detail in our discussion of Docket No. CP03-43-000, the Commission finds that the rates charged under the lease with Texas Eastern are reasonable and may be recovered through Dominion's incremental rate to its expansion shippers. We note that the rates under the lease are well below Texas Eastern's equivalent firm transportation reservation rate.

59. With respect to National Fuel's concerns, Dominion designed its rates for the expansion project on an incremental basis, and the Commission has accepted that aspect of Dominion's initial rate proposal. Dominion, therefore, is at risk for any costs which it does not recover from its incremental rates. Only the expansion shippers receiving service under this project or Dominion will bear the costs of the project, including the cost of the leased capacity. The Commission is not making a finding that Dominion may roll these costs in a later Section 4 filing. If Dominion does make such a proposal, it would have to identify the changed circumstances that justify such treatment, and customers would have an opportunity to present their objections.

6. Facility Cost Estimates

60. Dominion's Exhibit K estimates that the total cost of the facilities will be $78.0 million. Richmond claims that Dominion has provided no support for this estimate as required by Section 157.14(a)(13) of the Commission's regulations. Richmond also contends that Dominion is contractually required to charge initial rates based on actual costs, not on estimated costs. Richmond states that the pricing provisions in each of the Precedent Agreements is explicit in this regard stating that the "actual charge in effect

from time to time shall be a function of the actual costs incurred..." Richmond requests the Commission to condition Dominion's certificate authorization to require it to file revised initial rates based on actual and reasonably incurred costs.

61. Dominion replies that, although it cannot know the actual costs that will be incurred to complete this expansion project, it will comply with the Commission's regulations under Section 157.20(c)(3) by filing a cost comparison report within six months of the in-service date of this project. Dominion's states that its use of estimated costs in Exhibit K of its application follows the model it uses in all its certificate applications which have been repeatedly accepted and relied upon by the Commission. The estimated costs are based on Dominion's expertise and experience in building and operating similar facilities as well as Dominion's knowledge of current prices for the necessary materials.

Commission Response

62. First, although Dominion's Exhibit K, as Richmond asserts, omits the "brief statement indicating the source of information used as the basis for [its] estimates" required by Section 157.14(a)(13), it otherwise follows the directions set out in that provision by providing the cost of construction for each of the five proposed compressor station sites and the non-jurisdictional oil well work and separately stating for each the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction, and contingencies. The estimates appear to be reasonable and Richmond provides no evidence to show otherwise. Nevertheless, Dominion is on notice that any future certificate filings must provide all of the information that our regulations require to be included in Exhibit K.

63. Second, initial rates, by their nature, are based on reasonable estimates of costs since they must be calculated and analyzed prior to Commission approval of the certificate. Dominion states that it will file the required cost comparison report which will list the actual costs of the project within six months of the in-service date of the new facilities. However, initial rates established in a certificate proceeding cannot be modified after commencement of service except through a Section 4 or 5 rate case. Therefore, even if the report demonstrates that Dominion's initial rates result in under- or over-recovery of the actual costs, the initial rates cannot be modified based on Dominion's report absent a Section 4 or 5 rate filing, the precedent agreements' provisions notwithstanding.

64. Finally, we note with respect to cost overruns that the Policy Statement provides some protection for expansion shippers paying incremental rates such as Richmond. The Policy Statement asserts that the risks of construction cost overruns should be apportioned between the pipeline and the new customers in their service contracts and not be the responsibility of the pipeline's existing shippers. Thus, in pipeline contracts for service on newly constructed facilities, pipelines should not rely on standard AMemphis clauses,@ but should reach agreement with new shippers concerning who will bear the risks of cost overruns associated with the new construction.[31]

7. Hourly Flow Rates

65. National Fuel submits that flow rates under Dominion=s Rate Schedule FT have historically been a contentious issue, that the current Rate Schedule FT contract does not require flow on a uniform hourly basis, and FT rates are not designed with such flow in mind. Nevertheless, National Fuel notes, the Project Shippers have agreed in their precedent agreements to flow gas on a uniform hourly basis at both receipt and delivery points. National Fuel believes that these agreements clearly represent a material deviation and must be filed as such to prevent them from creating a precedent that would diminish FT service in the future.

66. In response, Dominion agrees that the issue of hourly flow rates on its system is unclear and heavily disputed but contends that the issue is beyond the scope of this certificate proceeding. Dominion states that to determine whether the uniform hourly flows agreed to by the Project Shippers constitute a material deviation would require a determination of what hourly flow rate is standard for FT service. Dominion=s Rate Schedule FT is silent on the subject of the level of a flow rate. Dominion states that it has always maintained that, while it gives its FT customers as much hourly flexibility as operationally possible, they have contractual entitlements only to a uniform hourly flow. Dominion states that many customers have interpreted the silence in the rate schedule differently, in some cases arguing to the extreme that there are no hourly limitations. Dominion adds that its past efforts to clarify the disputed interpretation of the FT Rate Schedule have been rejected by the Commission essentially because it has found the need

[31]Policy Statement, 88 FERC, at 61,747 (1999). AMemphis clause@ refers to an agreement that the pipeline may change the rate during the term of the contract by making rate filings under NGA Section 4.

for proposed hourly limits to be unsupported by the showing on the record in those cases.[32]

67. Dominion also expresses concern that filing the agreements as material deviations might be used to justify an argument for unbounded hourly FT service. Dominion contends that the limitation on hourly service for the expansion shippers will benefit existing customers by preserving more operational flexibility for them than might be the case if new customers were free to claim the same right to a greater hourly entitlement as asserted by some of Dominion's existing customers. Finally, Dominion states that it would not object if the Commission were to deem the expansion shippers' contracts to include material deviations as a matter of form, simply because they explicitly address hourly flow rights while the existing FT form of service agreement is silent on the subject. If the Commission makes this ruling, Dominion requests that the Commission approve the material deviation as consistent with the relevant parties' agreements and beneficial to other existing customers.

Commission Response

68. Each of the precedent agreements between Dominion and the expansion shippers provides that the shipper will enter into an FT or FTNN Transportation Service Agreement and that the agreement shall conform to the form of service agreement in Dominion's tariff. Dominion's pro forma service agreement and the tariff which it incorporates by reference are silent with respect to hourly flow rates. The precedent agreements do not state that they will deviate from Dominion's pro forma service agreements with respect to hourly flows. Thus, National Fuel's argument is premature since there are no signed service contracts to challenge. When the expansion shippers enter into binding contracts, Dominion is placed on notice that any deviations from its pro forma service agreements are required to be filed with the Commission. Negotiation of Part 284 transportation terms and conditions of service are not permitted under the Commission's policy, i.e., hourly flow provisions.

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[32] See CNG Transmission Corp., 90 FERC ¶ 61,351 (2002); CNG Transmission Corp., 81 FERC ¶ 61,346 (1997).

C. Texas Eastern - Docket No. CP03-43-000

1. At-Risk Condition and Rolled-In Rates

69. KeySpan states that since the lease agreement with Dominion has a primary term of 20 years and Dominion has the right to reduce its capacity after 10 years, and that Texas Eastern proposes to depreciate the cost of the expansion project at an annual rate of 1.22 percent, Texas Eastern will not recover its capital investment in the expansion project over the life of the lease. Therefore, KeySpan contends, Texas Eastern must be placed at-risk for the full recovery of the costs of its capital investment in the project, O&M, A&G and tax expenses.

70. Con Edison requests that the Commission determine whether it should condition this project on Texas Eastern’s rolling in the lease revenues and project expenses in its next rate case. If the Commission does not require this, the parties should be able to seek rolled-in rate treatment in Texas Eastern’s next rate case. Con Edison requests that Texas Eastern be required to present its rate of return on net investment (ROI) for this project or to explain why such a presentation is not required.

71. Texas Eastern responds that since it filed an abbreviated application under Section 157.5 of the Commission regulations, it is not required to submit data or information that is not relevant or necessary to explain its proposal. Texas Eastern contends that information on revenues and volumes is only required when the estimated revenues and expenses related to a proposed facility will significantly affect the operating revenues or operating expenses of an applicant and that the Dominion Expansion Project does not meet this threshold. Texas Eastern further argues that since it will segregate the costs of the expansion project facilities in the same manner as costs related to other incremental expansion projects, KeySpan's request for Texas Eastern to be made fully responsible for incremental costs related to the project is premature.

Commission Response

72. In considering whether to place a pipeline at risk for the costs associated with the construction of new facilities, our concern has been to ensure that present and future ratepayers will be protected from having to make inappropriate contributions to the costs associated with the new facilities due to unused capacity. Here, the lease agreement with Dominion may be reduced after the initial term of 10 years. If Dominion elects to reduce its capacity after 10 years, KeySpan is concerned that Texas Eastern will not recover its investment in the expansion project, and may shift those costs to Texas Eastern's existing customers. Although Texas Eastern's depreciation rate does not match the shorter term of

the proposed lease agreements, because the lease agreement is a property interest, upon expiration of the lease agreement and before it can use the facility to provide any subsequent service, Texas Eastern will need to file for NGA Section 7 certificate authorization in order to acquire the capacity and operate it as part of its own system.[33] In that proceeding, the Commission can determine, based on Texas Eastern's proposed future use of the incremental capacity, the appropriate treatment of the unrecovered costs (if any).[34] However, we note that Texas Eastern will be at risk for the remaining project costs and will not be able to shift any such costs to existing shippers if the proposed future use of the facilities is not fully subscribed when the lease agreement terminates.[35]

73. Con Edison requests that the Commission determine whether Texas Eastern may roll-in the lease revenues in its next Section 4 rate case. Texas Eastern's cost-revenue study indicates it will generate a net operating income of $11,434,711 per year from this project.[36] It is premature to make a determination that the incremental lease revenues are equal to or in excess of incremental costs since the lease term is variable and may be reduced after ten years. Further, Texas Eastern has not provided details of its cost estimates. Therefore, we will require Texas Eastern to maintain records to separately account for all costs and revenues related to the Dominion expansion project. This condition should alleviate the concern raised by KeySpan that existing shippers will subsidize the expansion project. Parties to future Texas Eastern rate cases are free to propose and support rolling-in of the Dominion Expansion Project's lease revenues and costs.

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[33] See, e.g., Dominion Transmission, Inc., et al., 99 FERC ¶ 61,367 at P 56 (2002); Islander East Pipeline Co. and Algonquin Gas Transmission Co., 99 FERC ¶ 61,363 at n.22 (2001). We also note that, at the end of the lease, Dominion is required to request abandonment of the lease pursuant to NGA Section 7(b).

[34] See Algonquin Gas Transmission Company, 100 FERC **&** 61,276 at P 86 (2002).

[35] See Transcontinental Gas Pipe Line Corp., 97 FERC ¶ 61,094 at 61,486 (2001).

[36] Texas Eastern's Docket No. CP03-43-000's Exhibit N. Texas Eastern argues that it is not required by the Commission's regulations to provide complete cost information. That is only true if it does not wish to seek cost recovery for these jurisdictional facilities.

2. Fuel and Electric Power Charges

74. Texas Eastern does not propose to assess gas fuel or electric power charges to provide the lease capacity to Dominion. Texas Eastern states that the addition of the lease capacity and lease volumes will result in reductions to Texas Eastern's fuel and electric power requirements, both on a peak winter design day and an annual basis. Texas Eastern's application contains a winter peak day study purporting to demonstrate that fuel and electric costs actually will go down as a result of its proposed construction and operation of the facilities to be leased to Dominion.

75. Con Edison contends that Texas Eastern's discussion and work papers demonstrate that the new facilities will reduce the required horsepower only when the system is not nominated to full capacity. Thus, Con Edison believes, Texas Eastern should either recover lost and unaccounted for gas (LAUF) from Dominion or Texas Eastern must state that it will absorb the LAUF gas costs attributable to the Dominion lease facilities.

76. KeySpan contends that Texas Eastern's analyses do not take into account the use of the Dominion Expansion Project during off-peak periods. KeySpan claims that Texas Eastern should be required to assess fuel costs to Dominion or to absorb the portion of fuel costs that is properly attributed to Dominion's use of Texas Eastern's facilities. Con Edison states that even assuming that the Dominion lease facilities and volumes would reduce Texas Eastern's total gas and electricity usages, Texas Eastern's system customers should not pay the entirety of the arguably lower remaining gas and electric costs. Since Dominion will receive the benefits of Texas Eastern's compression, Con Edison maintains, it should share in the costs of that compression.

77. Texas Eastern responds that the data contained in Exhibit Z to the application demonstrates how fuel and electric usage during a peak winter design day on its system will be decreased by the addition of the looping facilities. Texas Eastern states that the purpose of adding looping facilities in general is that equal or less compression will be required downstream of the looping facilities to move the additional gas volumes. Texas Eastern reiterates that the Dominion Expansion Project will result in decreased compression during peak periods. The same result occurs in the off-peak periods although to a lesser extent. Texas Eastern argues that the reduction in system-wide compression is appropriate and more than sufficient support for its proposal not to assess incremental fuel or electric power charges for the Dominion Expansion project.

78. In response to Con Edison's concern, Texas Eastern's March 31, 2003 data response, provides that Dominion will not be charged for lost and unaccounted for gas because gas transported under the lease agreement is afterward transported on the

downstream Dominion pipeline system. Thus the leased capacity is functionally and economically an integrated part of the Dominion system. Further, Dominion is already recovering lost and unaccounted for gas on these volumes through its system-wide fuel rates as well as an incremental fuel charge.

Commission Response

79. Texas Eastern does not propose to assess an incremental gas fuel or electric power charge to provide the lease capacity to Dominion because the capacity lease will result in reduced fuel and electric power requirements. Texas Eastern has provided studies that demonstrate how fuel and electric usage during a peak winter design day will be decreased by the addition of the looping facilities and that the same result occurs in the off-peak period, but to a lesser extent. The Commission finds that Texas Eastern has supported its claim that the expansion facilities will reduce fuel and electric power costs and will not require it to assess Dominion for these costs.

80. However, Texas Eastern has not made a similar showing with regard to lost and unaccounted for gas. The leased facilities are integrated with the rest of Texas Eastern's system. Therefore, Dominion's related commingled gas would be subject to the same losses suffered by Texas Eastern's customers utilizing the same integrated facilities. Under the Commission's policy announced in Mississippi River Transmission Corporation, no transaction can be exempted from a charge for lost and unaccounted for gas.[37] Further, it is inappropriate for Texas Eastern to charge its existing customers for lost volumes related to Dominion's capacity. Therefore, to ensure that Texas Eastern's existing customers do not subsidize the lost and unaccounted for gas related to the Dominion lease, Texas Eastern must either charge Dominion for lost and unaccounted for gas consistent with its existing mechanism, or impute billing determinates for the Dominion-related volumes in its calculation of the lost and unaccounted for gas rate component.

3. Line-Pack Costs

81. Noting that Exhibit K in Texas Eastern's application does not include costs associated with line pack, Con Edison contends that the Commission should require

[37] Mississippi River Transmission Corp., 98 FERC ¶ 61,119 at 61,353 (2002); see also Columbia Gas Transmission Corp., 99 FERC ¶ 61,190; 100 FERC **&** 61,240; order denying rehearing, 101 FERC **&** 61,378 at P 10 (2002).

Texas Eastern to explain whether line pack will be added for the new project and whether the costs of that line pack will be paid by Dominion or absorbed by Texas Eastern.

82. Texas Eastern responds that it has provided for the additional line pack in its estimates of the project costs in Exhibit K and has included in Account No. 148, Other Services, an estimate of $312,000 for line pack associated with the Dominion Expansion Project. Thus, the costs associated with line pack will be paid by Dominion, satisfying Con Edison's concern. However, Texas Eastern is advised that it must account for line pack in accordance with the requirements of the Commission's Uniform System of Accounts (e.g., Gas Plant Instruction 3(20), et al.).

4. Other Texas Eastern Cost Issues

83. Con Edison questions whether existing customers are being charged for the cost of the right-of-way and the currently abandoned pipe. Texas Eastern states that when it abandons facilities it removes the associated costs from its books, consistent with the Commission's Uniform System of Accounts.

84. The Commission routinely allows pipeline facilities to be abandoned in between rate cases without requiring the pipeline to re-justify or re-state its base rates to reflect the removal of the costs associated with the abandoned facilities.[38] The appropriate place for these concerns is in Texas Eastern's next Section 4 rate case.

85. Con Edison requests that Texas Eastern explain why approximately $3 million in costs are included for "right of way, right of way damages, and surveys" on pipe that Texas Eastern currently owns.

86. Texas Eastern responds that Exhibit K in its application only contains incremental right of way and survey costs associated with additional work for the Dominion expansion project. Specifically, the estimate of $1.497 million for Right Of Way and Damages (Line Nos. 132 and 133, respectively) reflects the costs of permanent and/or temporary right of way acquisition, as required, property damage settlements resulting from construction activities and labor for the agents performing this work. Texas Eastern adds that the costs for obtaining the original right of way or conducting the original surveys for the currently abandoned facilities are not included in this Exhibit K estimate.

[38] See, e.g., Columbia Gas Transmission Corp., 93 FERC ¶ 61.064 at 61,176 (2000).

87. The Commission concludes that Texas Eastern has satisfactorily addressed Con Edison's concern.

5. Relationship to Docket No. CP03-46-000

88. On January 30, 2003 Dominion and Texas Eastern filed a joint application in Docket No. CP03-46-000 seeking authorization to uprate five existing engines at the jointly owned Oakford Compressor Station.

89. Noting that all of the Precedent Agreements in this proceeding provide the expansion shippers with only one receipt point, the Oakford Interconnection, National Fuel expresses concern that the compressors uprated in Docket No. CP03-46-000 will burn more fuel when operated at a higher horsepower, possibly increasing the incremental fuel requirement recovered from Dominion=s Mid-Atlantic Project Shippers.

90. Dominion asserts that the proposed uprates of the Oakford engines are entirely unrelated to this proceeding or to the proposed service for the Mid-Atlantic Project Shippers.

Commission Response

91. We agree that the proposals in this proceeding appear to be unrelated to those in Docket No. CP03-46-000. The proposal in Docket No. CP03-46-000 to uprate the Oakford engines to higher horsepower is intended to provide greater operating flexibility to the Oakford Storage complex, allowing the already certificated level of storage capacity to be used more efficiently. The issue of which shippers should pay the cost of increased fuel resulting from using the compression at a higher horsepower is more appropriately addressed in the proceeding in Docket No. CP03-46-000.

D. Environmental Analysis

92. On February 28, 2003, the Commission staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Mid-Atlantic Expansion Project and Dominion Expansion Project and Request for Comments on Environmental Issues (NOI).

93. Commission staff prepared an environmental assessment (EA) for Dominion's and Texas Eastern's proposals. The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, cultural resources, air and noise, and safety. The EA also address substantive comments in response to the NOI filed by landowners Mr. Thomas Finucane and Mr. and Mrs. Doug Bland.

94. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Dominion's application and supplements filed April 9, May 16, and June 16, 2003, and Texas Eastern's application and supplements filed April 9, May 9, July 14, and July 18, 2003, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment. Dominion and Texas Eastern shall comply with the environmental conditions set forth in Appendix B to this order. In addition to those conditions, we will also require Dominion and Texas Eastern to develop and implement an environmental complaint resolution procedure as described in Ordering Paragraph G.

95. We also note that Dominion’s predicted noise levels from the new Mockingbird Hill and Quantico Compressor Stations, and the modified Crayne, Chambersburg, and Leesburg Compressor Stations are less than the maximum allowed L_{dn} of 55 dBA at the noise sensitive areas (NSAs). Environmental Condition 22 requires Dominion to make all reasonable efforts to assure that these predicted noise levels are not exceeded and also requires Dominion to file noise surveys showing this with the Secretary no later than 60 days after placing these compressor stations in service. If the noise measured during the operation at full load of any Compressor Stations exceeds an L_{dn} of 55 dBA at the NSAs, we will require Dominion to install additional noise controls to meet the noise level requirement within 1 year of the in-service date.

96. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction, replacement, or operation of facilities approved by this Commission.[39] Dominion and Texas Eastern shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Dominion and Texas Eastern.

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[39] See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

97. At a hearing held on September 10, 2003, the Commission on its own motion received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Dominion authorizing it to construct, own and operate the proposed facilities and lease capacity on Texas Eastern's system as described and conditioned herein, and as more fully described in its application.

(B) A certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct, own and operate the proposed facilities and to lease capacity to Dominion as described and conditioned herein, and as more fully described in its application.

(C) The certificates issued in this proceeding are conditioned on the following:

(1) Dominion's and Texas Eastern's compliance with Part 154 and paragraphs (a), (c), (e), and (f) of Section 157.20 of the Commission's regulations.

(2) Dominion and Texas Eastern maintaining their accounts for the certificated facilities in accordance with Section 154.309 of the Commission's Regulations.

(3) Construction of any facilities authorized in this proceeding shall be completed and the facilities placed in service within two (2) years from the date of this order in accordance with Section 157.20(b) of the Commission's regulations.

(D) Dominion's initial maximum recourse rate for firm storage service is its existing maximum Part 284 rate. Dominion's initial maximum incremental recourse rate for firm transportation service is $9.9070 per Dth per month. Dominion is required to abide by the terms of its tariff and the Commission's regulations and policies regarding rate discounts and negotiated rates as discussed above.

(E) Texas Eastern is required to either charge Dominion for lost and unaccounted for gas, or to impute billing determinants for the Dominion related volumes in its calculation of lost and unaccounted for gas.

(F) Dominion and Texas Eastern shall comply with the environmental conditions set forth in Appendix B to this order.

(G) Dominion and Texas Eastern each shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Dominion and Texas Eastern shall mail the complaint procedures to each landowner whose property would be crossed by their project.

(a) In the letter to affected landowners, Dominion and Texas Eastern shall:

(1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
(2) instruct the landowners that, if they are not satisfied with the response, they should call (Applicant)'s Hotline; the letter should indicate how soon to expect a response; and
(3) instruct the landowners that, if they are still not satisfied with the response from Dominion's or Texas Eastern's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.

(b) In addition, Dominion and Texas Eastern shall include in their weekly status reports a copy of a table that contains the following information for each problem/concern:
(1) the date of the call;
(2) the identification number from the certificated alignment sheets of the affected property;
(3) the description of the problem/concern; and
(4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

(H) Dominion and Texas Eastern shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Dominion and Texas Eastern. Dominion and Texas Eastern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) The late motions to intervene are granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix A

Interventions
Dominion Transmission, Inc. and Texas Eastern Transmission, L.P.
Docket Nos. CP03-41-000 and CP03-43-000

Baltimore Gas & Electric Company
City of Richmond, Virginia
Columbia Distribution Companies
Columbia Gas Transmission Corp.
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.
Doswell Limited Partnership, Northeast Energy Associates, and North Jersey Energy
Independent Oil & Gas Association of West Virginia
Key Span Delivery Companies
Midwestern Gas Transmission Company
National fuel Gas Distribution Corp.
New Jersey Natural Gas Company
New York State Electric & Gas Corp.
NUI Utilities, Inc.
PECO Energy Company
Philadelphia Gas Works
Process Gas Consumers Group (Docket No. CP03-41-000 only)
Proliance Energy LLC (Docket No. CP03-43-000 only)
PSEG Energy Resources & Trade LLC
Public Service Company of North Carolina
Statoil North America Inc. (Docket No. CP03-41-000 only)
Tennessee Gas Pipeline Company
Texas Eastern Transmission, LP (Docket No. CP03-41-000 only
The East Ohio Gas Co. D/b/a Dominion East Ohio, the People Natural Gas Company d/b/a Dominion Peoples & Hope Gas, Inc. D/b/a Dominion Hope (Hope Gas, Inc. D/b/a Dominion Hope. Intervened in Docket No. CP03-41-000 only)
The Public Service Commission of the State of New York
Thomas & Susan Finucane
Transcontinental Gas Pipe Line Corp.
Virginia National Gas
Virginia Power Energy Marketing, Inc.
Washington Gas Light Company

Appendix B
Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Dominion and Texas Eastern shall both follow the construction procedures and mitigation measures described in their applications and supplements and as identified in the environmental assessment (EA), unless modified by this Order. Dominion and Texas Eastern must:

    a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
    b. justify each modification relative to site-specific conditions;
    c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
    d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

    a. the modification of conditions of this Order; and
    b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. Prior to any construction, Dominion and Texas Eastern shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, Dominion and Texas Eastern shall file with the Secretary any revised

detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Dominion's and Texas Eastern's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Dominion's and Texas Eastern's right of eminent domain granted under NGA Section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Dominion and Texas Eastern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP before construction in or near that area.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resources mitigation measures;
b. implementation of endangered, threatened, or special concern species mitigation measures;
c. recommendations by state regulatory authorities; and
d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of this certificate and before construction begins, Dominion and Texas Eastern shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Dominion and Texas Eastern will implement the mitigation measures required by this Order for their project. Each company must file revisions to their plan as schedules change. The plan shall identify:

   a. how Dominion and Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
   b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
   c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
   d. what training and instructions Dominion and Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
   e. the company personnel (if known) and specific portion of Dominion's and Texas Eastern's organization having responsibility for compliance;
   f. the procedures (including use of contract penalties) Dominion and Texas Eastern will follow if noncompliance occurs; and
   g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

      i. the completion of all required surveys and reports;
      ii. the mitigation training of onsite personnel;
      iii. the start of construction; and
      iv. the start and completion of restoration.

7. Dominion and Texas Eastern shall employ at least one environmental inspector per compressor station site or construction spread. The environmental inspector shall be:

   a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
e. responsible for maintaining status reports.

8. Dominion and Texas Eastern shall file updated status reports prepared by the head environmental inspector with the Secretary on a biweekly basis until all construction-related activities, including restoration and initial permanent seeding, are complete for their project. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
c. corrective actions implemented in response to all instances of noncompliance, and their cost;
d. the effectiveness of all corrective actions implemented;
e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
f. copies of any correspondence received by Dominion and Texas Eastern from other Federal, state or local permitting agencies concerning instances of noncompliance, and Dominion's and Texas Eastern's response.

9. Dominion and Texas Eastern must receive written authorization from the Director of OEP before commencing service from their project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

10. Within 30 days of placing the certificated facilities in service, Dominion and Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:

    a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    b. identifying which of the certificate conditions Dominion and Texas Eastern has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Prior to construction, Texas Eastern shall identify the milepost locations where the project would cross wellhead protection areas and identify any requirements for crossing these areas that are imposed by the Pennsylvania Department of Environmental Protection (PADEP) or other appropriate authorities.

12. Texas Eastern shall prepare a schedule identifying when trenching or blasting would occur within each water body greater than 10 feet wide, or within any coldwater fishery. Texas Eastern shall file the schedule with the Secretary within 30 days of the acceptance of the certificate and revise it as necessary to provide at least 14 days advance notice. Changes within this last 14-day period must provide for at least 48 hours advance notice.

13. Prior to construction, Texas Eastern shall provide a site-specific plan for the crossing of South Fork Tenmile Creek at milepost (MP) 0.77 on the Waynesburg Discharge. This plan shall include a scaled drawing that shows all workspaces for crossing the water body, road, and railroad; and a description of how the small tributary that parallels the right-of-way would be protected.

14. Texas Eastern shall consult with the Pennsylvania Department of Conservation and Natural Resources, and other appropriate state agencies, regarding the need for additional mitigation at the crossing of Buck Run at MP 4.72 and while constructing parallel to Buck Run Tributary near MP 4.9 on the Bedford Discharge. Texas Eastern shall file the results of this consultation and any additional mitigation or site-specific plans with the Secretary prior to construction.

15. Texas Eastern shall consult with the PADEP to identify the specific construction timing window that will be required for each water body crossed by the Dominion

Expansion Project. Texas Eastern shall file this information with the Secretary prior to construction.

16. Prior to construction, Dominion shall consult with the U.S. Fish and Wildlife Service (FWS) concerning the modified location of the Quantico Compressor Station and file the FWS comments about the impact of the modified project on federally-listed endangered and threatened species that may be in the project area.

17. Texas Eastern shall consult with the Pennsylvania Department of Conservation and Natural Resources and the Pennsylvania Game Commission about the surveys for the stiff cowbane and upland sandpiper, respectively. Any mitigation plans developed as a result of the surveys shall be filed with Secretary prior to construction.

18. Texas Eastern shall consult with the Land Management Supervisor for State Game Land 124 near MP 3.84 on the Bedford Discharge regarding construction across this resource. Texas Eastern shall file the results of this consultation and any mitigation plans developed with the Secretary prior to construction.

19. Texas Eastern shall implement the following procedures when crossing the Tuscarora Trail at MP 4.15 on the Bedford Discharge:

    a. post warning signs in each direction along the trail;
    b. erect safety fencing;
    c. permit hikers to cross the trench safely by leaving trench plugs or other bridging devices;
    d. construct and complete restoration through the area quickly; and
    e. coordinate with state/park officials as necessary.

20. Dominion shall consult with the Virginia state historic preservation officer (SHPO) regarding the results of its archeological survey of the modified location for the Quantico Compressor Station. Dominion shall defer construction of this facility and associated staging, storage, and temporary work areas and new or to be improved access roads until it files the SHPO's comments with the Secretary, and, the Director of OEP reviews and approves any additional reports and notifies Dominion in writing that it may proceed.

    All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: ACONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.@

21. Texas Eastern shall defer construction and use of pipeline facilities and associated staging, storage, and temporary work areas and new or to be improved access roads until it files the Pennsylvania SHPO's comments with the Secretary, and, the Director of OEP reviews and approves any additional reports and notifies Texas Eastern in writing that it may proceed.

    All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: ACONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.@

22. Dominion shall make all reasonable efforts to assure its predicted noise levels from the new Mockingbird Hill and Quantico Compressor Stations, and the modified Crayne, Chambersburg, and Leesburg Compressor Stations are not exceeded at nearby noise sensitive areas (NSAs)and shall file noise surveys showing this with the Secretary no later than 60 days after placing these compressor stations in service. If the noise measured during the operation at full load of any Compressor Stations exceeds an L_{dn} of 55 dBA at the NSAs, Dominion shall install additional noise controls to meet the noise level requirement within 1 year of the in-service date. Dominion shall confirm compliance with the noise level requirement by filing a second noise survey for each compressor station with the Secretary no later than 60 days after it installs the additional noise controls.